

Xidis, Claire

From: Ehrich, Delmar R. [DEhrich@faegre.com]
Sent: Friday, March 27, 2009 1:02 PM
To: Xidis, Claire; rnance@riggsabney.com
Cc: Jorgensen, Jay T.; George, Robert; John Elrod; rsanders@youngwilliams.com; Theresa Noble Hill; Walker, Todd P.; Dolan, Christopher H.; Scott McDaniel; James Graves; Louis Bullock; Richard Garren; Mark_Quayle@cargill.com; Walker, Todd P.; Jones, Bruce; Kleibacker Lee, Krisann C.; Daniel.Lennington@oag.ok.gov; Trevor.Hammons@oag.ok.gov; Kelly.Burch@oag.ok.gov; David Riggs; David Page; Richard Garren; Moll, Ingrid; Baker, Fred; Ward, Liza; Sharon Gentry; bblakemore@bullock-blakemore.com; Louis Bullock
Subject: RE: State of Oklahoma v. Tyson, et al. Plaintiff's claim for Agency response costs.

Claire:

I ask again that the plaintiff provide a complete Rule 26(a) disclosure for each of the seven authors of the Stratus report it expects to testify at trial. Rule 26(a) plainly requires plaintiff to do so. Precedent also plainly establishes that an offer to make potential testifying experts available for deposition does not cure the prejudice to an opposing party resulting from the lack of complete expert disclosure under Rule 26(a). An opposing party need not depose each potential expert in an attempt to sort out what the proponent of such experts should have disclosed. Plaintiff plainly cannot call each of the seven Stratus authors to testify to the same opinions; after the first such expert testimony, the rest would be excluded as cumulative. Indeed, as experienced trial lawyers you know that the Court will never allow plaintiff to call seven experts to testify as to the same opinions. And I think you've acknowledged as much in your conversation with me, in which you described using the Stratus experts in a "building block" fashion -- in short, some smaller number of the Stratus authors called to testify to discrete steps in or portions of the CV process and resulting conclusions.

So the plaintiff is playing a game of "hide the testifying expert," to the detriment of the defendants.

As to the deposition schedule, you keep insisting that the plaintiff has offered the the Stratus authors for their depositions on several occasions. However, the defendants have been forced to negotiate out of necessity because of the plaintiff's failure to make the required expert disclosure and refusal to agree those depositions may be taken out of time.

Now that the Court has continued the discovery deadline until May 15, the defendants will not take any Stratus depositions until after the court has resolved that the scope of disclosure issue. We do not want to waste our resources or the time of your experts on depositions that might not ultimately be necessary after our review of a complete disclosure.

If the plaintiff refuses to make a complete disclosure, we intend to seek promptly relief from the court in a motion to strike the Stratus report or, in the alternative, for complete Rule 26(a) disclosures as to each Stratus author the plaintiff may call to testify at trial.

Will the plaintiff agree to make the disclosures required by Rule 26(a)?

If not, we will file the motion. We intend to seek to expedited consideration of that motion.

I look forward to hearing from you by the close of business today on both points.

3/27/2009



Del

From: Xidis, Claire [mailto:cxidis@motleyrice.com]

Sent: Thursday, March 26, 2009 14:36

To: Ehrich, Delmar R.; rnance@riggsabney.com

Cc: Jorgensen, Jay T.; George, Robert; John Elrod; rsanders@youngwilliams.com; Theresa Noble Hill; Walker, Todd P.; Dolan, Christopher H.; Scott McDaniel; James Graves; Louis Bullock; Richard Garren; Mark_Quayle@cargill.com; Walker, Todd P.; Jones, Bruce; Kleibacker Lee, Krisann C.; Daniel.Lennington@oag.ok.gov; Trevor.Hammons@oag.ok.gov; Kelly.Burch@oag.ok.gov; David Riggs; David Page; Richard Garren; Moll, Ingrid; Baker, Fred; Ward, Liza; Sharon Gentry; bblakemore@bullock-blakemore.com; Louis Bullock

Subject: RE: State of Oklahoma v. Tyson, et al. Plaintiff's claim for Agency response costs.

Delmar -

We are working on some supplemental responses. We can't promise that they will be ready by your unilaterally created deadline of April 1st, but we are aiming to have them ready by the end of next week.

Trevor Hammons will be in touch with you about the 30(b)(6) in the near future.

In addition to the first two sets of proposed deposition dates for the Stratus authors, we have proposed three additional dates for the deposition of Dr. Bishop. After we proposed April 6 and 11, you stated you could accommodate any work day within the discovery period to conduct his deposition. Thus, we provided you with yet another date. Particularly because Dr. Bishop was willing to rearrange previously made plans to accommodate you, I requested that you confirm our latest proposed date of April 14 by 5 pm yesterday. You did not respond. I assume then that you do not intend to depose Dr. Bishop.

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From: Ehrich, Delmar R. [mailto:DEhrich@faegre.com]

Sent: Thursday, March 26, 2009 1:28 PM

To: Xidis, Claire; rnance@riggsabney.com

Cc: Jorgensen, Jay T.; George, Robert; John Elrod; rsanders@youngwilliams.com; Theresa Noble Hill; Walker, Todd P.; Dolan, Christopher H.; Scott McDaniel; James Graves; Louis Bullock; Richard Garren; Mark_Quayle@cargill.com; Walker, Todd P.; Jones, Bruce; Kleibacker Lee, Krisann C.

Subject: RE: State of Oklahoma v. Tyson, et al. Plaintiff's claim for Agency response costs.

Bob and Claire--

I have heard nothing from the plaintiff concerning my email from last Friday concerning the state's obligation to supplement its response to Cargill's discovery requests as to response costs. I ask that you also identify the plaintiff's designee relative to the March 20 Rule 30(b)(6) deposition notice as to agency response costs.

Please respond by the close of business today.

Del

From: Ehrich, Delmar R.

Sent: Friday, March 20, 2009 17:09

To: 'Xidis, Claire'

3/27/2009

Cc: 'Jorgensen, Jay T.'; George, Robert; John Elrod; rsanders@youngwilliams.com; 'Theresa Noble Hill'; Walker, Todd P.; Dolan, Christopher H.; Scott McDaniel; James Graves; 'Louis Bullock'; Richard Garren; 'Mark_Quayle@cargill.com'
Subject: State of Oklahoma v. Tyson, et al. Plaintiff's claim for Agency response costs.

Claire--

In your March 16, 2009 email, you request clarification as to the Cargill Turkey Production requests for production cited in the third paragraph of my March 13, 2009 communication to you and Mr. Garren. As you surmised, there is a typographical error in this paragraph. The correct citation is to Cargill Turkey Production, LLC's (CTP's) Requests for Production Nos. 29, 32, 37, 38, 39, 44, and 48, served on Plaintiffs on August 22, 2006 in CTP's Amended First Set of Interrogatories and Requests for Production. The narrative description of each request as stated the same paragraph of my March 13, 2009 letter is correct. Moreover, these requests for production are merely examples of areas where Plaintiffs need to supplement their responses in light of their damages/response costs allegations. The supplementation of the same information is warranted under the umbrella CTP Request for Production No. 4, as quoted in my letter, which specifically addresses damages.

In addition, I note that supplementation as to agency response costs is also warranted in response to Cargill, Inc.'s Interrogatory No. 10, which requests: "[S]tate with particularity the factual and legal basis for the allegation contained in Counts 1 and 2 of Your Amended Complaint that any Cargill entity violated CERCLA and identify every witness upon whom you will rely to establish each fact." Since the factual basis for Plaintiffs' CERCLA claim includes their alleged response costs, supplementation of this interrogatory is necessary to disclose those response cost facts.

I will also note that Bruce Jones, in a letter dated October 17, 2008, to David Page and Richard Garren made a general demand that plaintiff supplement its earlier discovery responses, clearly encompassing the requests listed above. The plaintiff made no supplementation.

Accordingly, I renew my demand that the state supplement its responses to the discovery requests listed above relative to the state's claim for agency response costs. Please provide all supplemental responses, including responsive documents, no later than April 1.

Today we have served a Rule 30(b)(6) deposition notice on the state relative to the state's agency response cost claim. The notice is returnable on April 7.

Contact me if you have any comments or questions.

Del Ehrich

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Delmar R. Ehrich
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3/27/2009



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of this communication.

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